Issuance of Complaints & Arrest Warrants

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Part A — Commentary

1.1 Introduction

This monograph discusses the laws governing complaints and arrest warrants. The rules governing the issuance of complaints and arrest warrants in felony cases are contained in MCR 6.101-6.103. Primary authorization for misdemeanor complaints and warrants comes from Chapter 4 of the Code of Criminal Procedure, MCL 764.1-764.28.* In the event Chapter 4 is silent on a particular issue in a misdemeanor case, this monograph will refer to MCR 6.101, 6.102, and 6.103 for guidance in determining the appropriate procedure.

*MCR 6.101-6.103 do not apply to misdemeanor cases. See MCR 6.001. Moreover, no similar court rules govern complaints and warrants in misdemeanor cases.

1.2 Circumstances Allowing Warrantless Arrests

A peace officer may make a warrantless arrest if a felony, misdemeanor, or ordinance violation is committed in the officer's presence. MCL 764.15(1)(a). A peace officer may also make a warrantless arrest for certain offenses not committed in his or her presence when:

- A person has committed a felony outside the presence of the officer, MCL 764.15(1)(b).
- The officer has reasonable cause* to believe that a person has committed a misdemeanor punishable by more than 92 days in jail or a felony and reasonable cause to believe the person has committed it, MCL 764.15(1)(c)-(d).
- The officer receives positive information from a reliable radio, telegraphic, or electronic source that another officer or a court holds a warrant for a person's arrest, or information from those sources from which the officer has reasonable cause to believe a misdemeanor punishable by more than 92 days or a felony has been committed along with reasonable cause to believe the person committed it, MCL 764.15(1)(e)-(f).
- The officer has reasonable cause to believe that a person is an escaped convict, has violated a condition of parole, or has violated one or more conditions of a conditional release order or probation order by any court of any state or territory, MCL 764.15(1)(g).
- The officer has reasonable cause to believe a person was involved in an accident while operating a vehicle, vessel, snowmobile, or off-road vehicle (ORV) while under the influence of liquor, a controlled substance, or while having an unlawful blood alcohol content, MCL 764.15(1)(h), (j)-(*l*). (Warrantless arrest authority also extends to violations of substantially corresponding local ordinances. *Id*.)

*The 1989 Staff Comment to MCR 6.102 states that "reasonable cause" and "probable cause" are equivalent. However, according to the Staff Comment, the preferred term is "probable cause." For further information on "probable cause," see Section 1.10.

F The person is found in the driver's seat of a vehicle parked or stopped on a highway or street if the vehicle into the roadway and the officer has reasonable cause to believe the person was operating the vehicle under the influence of liquor, a controlled substance, or while having an unlawful blood alcohol content. MCL 764.15(i). (Warrantless arrest authority also extends to violations of substantially corresponding local ordinances. *Id*.)

F The accused is involved in retail fraud whether or not committed in the officer's presence, MCL 764.15(1)(m).

F The accused is involved in a misdemeanor on school property whether or not committed in the officer's presence, MCL 764.15(1)(n).

Other statutes allow a peace officer to make a warrantless arrest when a criminal offense or violation of a court order allegedly occurred.

F MCL 764.15a authorizes a peace officer to make a warrantless arrest in cases involving domestic assault and aggravated domestic assault.* The officer may arrest a person regardless of whether the violation takes place in his or her presence, as long as the arresting officer has reasonable cause to believe both of the following:

*For a complete discussion of this topic, see Lovik, *Domestic Violence: A Guide to Civil & Criminal Proceedings* (MJI, 2d ed, 2001), Section 3.4.

(1) the violation occurred or is occurring; and

(2) the individual arrested has had a child in common with the victim, resides or has resided in the same household as the victim, is a spouse or former spouse of the victim, or is or has been in a dating relationship with the victim.

F MCL 764.15b authorizes a peace officer to make a warrantless arrest if the officer has or receives positive information that another officer has reasonable cause to believe that a personal protection order (PPO) or a valid foreign protection order (FPO)* has been violated and if all of the following conditions exist:

*Special procedures apply when a foreign protection order is involved. See MCL 600.2950h et seq.

- a PPO has been issued under either the non-domestic stalking or domestic relations PPO statutes;
- the individual named in the PPO is violating or has violated the order (the act must be specifically prohibited in the order);* and
- the PPO states on its face that a violation of its terms subjects the individual to immediate arrest and to either of the following:

*The officer must show that the respondent had notice that a PPO is in effect. For a complete discussion of this topic, see Lovik, *Domestic Violence: A Guide to Civil & Criminal Proceedings* (MJI, 2d ed, 2001), Section 8.5(A).

(1) if the individual is 17 years of age or older, to criminal contempt sanctions of imprisonment for not more than 93 days and to a fine of not more than $500.00; or

> (2) if the individual is less than 17 years of age, to the dispositional alternatives in MCL 712A.18 of the Juvenile Code.

A police officer may make a warrantless arrest if the officer has or receives positive information that another officer has reasonable cause* to believe that the person is violating or has violated a condition of release imposed under MCL 765.6b or 780.582a. MCL 764.15e(1). In *People v Champion*, 452 Mich 92 (1996), the Supreme Court stated that:

> "Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Id*. at 115. [Citations omitted.]

*The 1989 Staff Comment to MCR 6.102 states that "reasonable cause" and "probable cause" are equivalent. However, according to the Staff Comment, the preferred term is "probable cause." For further information on "probable cause," see Section 1.10.

MCL 764.15e(1) and MCL 764.15(1)(g) both cover conditional release violations. However, MCL 764.15e(1) is focused on pretrial conditional release, while MCL 764.15(1)(g) is focused on post-conviction conditional release. For further discussion of interim bail under MCL 764.15e(1), see Section 1.13.

A private person may make a warrantless arrest for a felony regardless of whether the felony is committed in his or her presence. MCL 764.16(a)-(b). Additionally, a private person may make a warrantless arrest if summoned by a peace officer to assist the officer in making an arrest. MCL 764.16(c).

The validity of an arrest is not affected by a subsequent judicial determination that the statute or ordinance is held to be unconstitutional. Rather, "[a] custodial arrest is permitted if an arresting officer possesses enough information demonstrating probable cause to believe that an offense has occurred, and the defendant committed it." *People v MacLeod*, ___ Mich App ___, ___ (2002). In *MacLeod*, the defendant was arrested for violating a disorderly conduct ordinance for yelling, among other things, "[y]ou f---ing pig" to a police officer while standing with a group of people on a public sidewalk. In addition, he resisted his own arrest. Although arrested for disorderly conduct, defendant was only charged with, and eventually convicted of, resisting and obstructing a police officer. On appeal, he argued that his conviction should be reversed, since a person may lawfully resist an unlawful arrest based on the unconstitutionality of the disorderly conduct ordinance. The Court of Appeals upheld defendant's conviction, holding that the validity of an arrest is not affected by any *subsequent* judicial determination that an ordinance is unconstitutional, and that the duties of police officers do not extend to the analysis and determination of the constitutionality of laws.

1.3 Circumstances Requiring an Arrest Warrant

An arrest warrant is required to arrest a person, except in circumstances permitting a warrantless arrest, which are delineated in MCL 764.15 and the preceding subsection of this monograph.

An arrest warrant is also required to arrest a person in a dwelling house unless exigent circumstances exist that would prevent the officer from obtaining a warrant. *Payton v New York*, 455 US 573, 589 (1980); *Steagold* v *United States*, 451 US 204, 221-222 (1981); *People v Parker*, 417 Mich 556, 561 (1983). If the officer has probable cause to believe immediate entry of a dwelling house is required to provide medical aid to a person, the officer may enter a dwelling house, and once inside, the officer may make a warrantless arrest upon a finding of probable cause (i.e., under the plain view doctrine). *People v Ohlinger*, 438 Mich 477, 483-484, 486 (1991).

1.4 Alternatives to a Formal Complaint and Warrant

The procedures described in this monograph pertain only to those situations where both a complaint and arrest warrant are necessary prerequisites for a valid arrest. However, there are a number of circumstances that excuse the requirement of either a formal complaint or a formal warrant.

A. Appearance Tickets for Alleged Misdemeanor Violations

The Code of Criminal Procedure allows a police officer to issue an appearance ticket to a person who is arrested without a warrant "for a misdemeanor or ordinance violation for which the maximum penalty does not exceed 93 days in jail or a fine, or both." MCL 764.9c(1). "Appearance ticket" is defined in MCL 764.9f(1) as:

> "As used in sections 9c to 9g, "appearance ticket" means a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of state law or local ordinance for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both."

The original appearance ticket serves as the complaint or notice and must be filed with the court. MCL 764.9f(1)(a). The first copy is the abstract of court record; the second copy shall be retained by the local enforcement agency; the third copy shall be delivered to the alleged violator. MCL 764.9f(1)(b)-(d).

> **Note:** Delivery of the appearance ticket "to the alleged violator" is a legal requirement under MCL 764.9f(1)(d). Accordingly, delivery of the appearance ticket by posting it on a door or window, or leaving it with the alleged violator's friends or family members, may be deemed legally insufficient. Moreover, the peace officer who delivers the appearance ticket should explain it to the alleged violator.

*See Section 1.8(B) for further discussion of the oath requirement for complaints.

The appearance ticket should be treated as if made under oath if it contains the following statement immediately above the date and signature of the officer: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief." MCL 764.1e.*

A magistrate can accept a plea of guilty or not guilty based solely on the appearance ticket. If there is a plea of not guilty, a sworn complaint must be filed with the magistrate. The magistrate cannot issue an arrest warrant until the complaint is filed. MCL 764.9g(1) provides:

> "When under the provisions of sections 9b or 9c an officer issues an appearance ticket, an examining magistrate may accept a plea of guilty or not guilty upon the appearance ticket, without the necessity of a sworn complaint. If the offender pleads not guilty, no further proceedings may be had until a sworn complaint is filed with the magistrate. A warrant for arrest shall not issue for an offense charged in the appearance ticket until a sworn complaint is filed with the magistrate."

> **Note:** A "magistrate" means a "a judge of the district court or a judge of a municipal court. Magistrate does not include a district court magistrate, except that a district court magistrate may exercise the powers, jurisdiction, and duties of a magistrate if specifically provided in this act, the revised judicature act of 1961, or any other statute." MCL 761.1(f).

However, a district court magistrate may accept a guilty plea upon an appearance ticket without the necessity of a sworn complaint for those offenses within his or her jurisdiction. MCL 764.9g(2).

If the defendant fails to appear at the criminal court at the designated time, the court may issue a summons or warrant for the arrest of the defendant. MCL 764.9e.

As of April 1, 2002, MCL 764.9c(3) provides that appearance tickets may not be issued to persons accused of assault and battery, including domestic assault and battery, MCL 750.81, or aggravated assault and battery,

including domestic aggravated assault and battery, pursuant to MCL 750.81a, if the victim of the assault is:

- The offender's spouse;
- The offender's former spouse;
- An individual who has had a child in common with the offender;
- An individual who has or has had a dating relationship* with the offender; or
- An individual residing or having resided in the same household as the offender.

*A "dating relationship" means "frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context." MCL 764.9c(3)(a).

Appearance tickets may not be issued to:

- A person subject to detainment for violating a personal protection order. MCL 764.9c(3)(b).
- A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release. MCL 764.9c(3)(c).

B. Citations to Appear

Under MCR 6.615(A)(1)(a), a peace officer may issue a written citation to a person arrested without a warrant on a misdemeanor traffic case. The citation must be filed in district court.

A single citation to appear may not allege both a misdemeanor and a civil infraction. MCR 6.615(A)(3).

> **Note:** Although many citations are filed with courts that contain both misdemeanor and civil infractions on one citation, some courts accept this method by recognizing each copy of the citation as a separate offense.

The citation serves as a summons to command the initial appearance of the defendant and to command a response from the defendant as to his or her guilt of the violation alleged. MCR 6.615(A)(2)(a)-(b).

The Michigan Vehicle Code requires police officers to issue citations to appear for persons who are arrested without warrants for MVC violations* that are misdemeanors, unless the violations involve conditions referred to in MCL 257.617, MCL 257.619, or MCL 257.727. MCL 257.728(1). Thus, under MCL 257.728(1), a citation to appear cannot be issued, and the defendant must be arraigned, when any of the following violations are involved:

*Or local ordinances substantially corresponding to MVC misdemeanor violations. MCL 257.728(1).

- Leaving the scene of a serious personal injury accident, MCL 257.617(1).
- Failing to give the proper information after an accident which causes death, serious injury, or property damage to another person's vehicle, MCL 257.619.
- Negligent homicide, MCL 257.727(a) and MCL 750.324.
- Driving under the influence of an intoxicating liquor or other controlled substance, or a local ordinance substantially corresponding to MCL 257.625(1), MCL 257.727(b) and MCL 257.625(1).
- Driving while impaired, or a local ordinance substantially corresponding to MCL 257.625(3), MCL 257.727(b) and MCL 257.625(3).
- Driving under the influence of an intoxicating liquor or other controlled substance causing the death of another, MCL 257.727(1) and MCL 257.625(4).
- Operating a vehicle under the influence of an intoxicating liquor or other controlled substance causing serious impairment of a bodily function to another, MCL 257.727(b) and MCL 257.625(5).
- Driving with any bodily alcohol content if the person is under 21 years of age, or a local ordinance substantially corresponding to MCL 257.625(6), MCL 257.727(b) and MCL 257.625(6)
- Violating MCL 257.625(1), (3), (4), or (5) while a person under the age of 16 is in the vehicle, MCL 257.727(b) and MCL 257.625(7).
- Reckless driving, or a substantially corresponding local ordinance, unless the officer deems that issuing a citation and releasing the person will not constitute a public menace, MCL 257.727(c) and MCL 257.626.
- The person arrested does not have in her immediate possession a valid operator's or chauffeur's license. However, if the officer can satisfactorily determine the identity of the person and whether the person can be found if they fail to appear before the designated magistrate, he or she may issue a citation, MCL 257.727(d) and MCL 257.311.

MCL 257.727 requires the peace officer to take the arrested person to a "magistrate who is the nearest or most accessible within the judicial district" or, if the person is a minor, to the family division of the circuit court within the county where the crime was allegedly committed.

In lieu of being issued a citation to appear, Michigan residents may still demand to be brought to a magistrate or to the family division of the circuit court for arraignment. MCL 257.728(1). Non-Michigan residents may also demand to be taken in front of a magistrate for arraignment. MCL 257.728(5). If a magistrate is not available to hear the complaint against a non-resident, or if an immediate trial cannot be had, the non-resident may leave with the officer a guaranteed appearance certificate or a sum of money not to exceed $100.00. *Id*. A non-resident may not be issued a citation to appear if he or she was arrested for a violation of any offenses listed in MCL 257.727(a)-(d).*

*See the preceding list of offenses.

For Michigan residents who fail to appear or respond to the misdemeanor traffic citation, the court "must initiate procedures required by MCL 257.321a for failure to answer a citation,"* and "may issue a warrant for the defendant's arrest after a sworn complaint is filed with the court." MCR 6.615(B)(1)(b).

*MCL 257.321a governs the cancellation, suspension, and revocation of a driver's license.

For non-residents who fail to appear or respond, MCR 6.615(B)(2)(a)-(c) states:

> "(a) the court may mail a notice to appear to the defendant at the address in the citation;
>
> "(b) the court may issue a warrant for the defendant's arrest after a sworn complaint is filed with the court; and
>
> "(c) if the court has received the driver's license of a nonresident, pursuant to statute, it may retain the license as allowed by statute. The court need not retain the license past its expiration date."

MCL 257.728e* provides:

> "When under [MCL 257.728] an officer issues a citation for a misdemeanor punishable by imprisonment for not more than 90 days, a magistrate may accept a plea of guilty or not guilty upon the citation, without the necessity of a sworn complaint but the officer shall sign the complaint before the magistrate makes a docket return on the complaint. If the offender pleads not guilty, further proceedings may not be had until a sworn complaint is filed with the magistrate. A warrant for arrest shall not issue for an offense under this act until a sworn complaint is filed with the magistrate."

*MCL 257.728e is the Vehicle Code counterpart to the Code of Criminal Procecure's MCL 764.9g. See Section 1.4(A) for further discussion of appearance tickets.

C. Summons to Appear in Felony Cases

*The 1989 Staff Comment to MCR 6.103 states that the rule is based on Rule 4 of the Federal Rules of Criminal Procedure.

In felony cases under MCR 6.103,* the prosecutor may request that the court issue a summons instead of an arrest warrant. If the accused fails to appear in response to the summons, the court, on request, must issue an arrest warrant. MCR 6.103(A).

The summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place. MCR 6.103(B).

MCR 6.103(C)(1)-(3) permits a summons to be served by:

> "(1) delivering a copy to the named individual;
>
> "(2) leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or
>
> "(3) mailing a copy to the individual's last know address."

"Service should be prompt to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court before which the person is summoned to appear." MCR 6.103(C).

> **Note:** A summons in felony cases frequently involves corporate defendants. The most common types of crimes in these cases are white-collar crimes and involuntary manslaughter arising from a workplace death. Although uncommon, a summons can be used against an individual defendant. For instance, a summons has been used against an individual when there has been a cooperation agreement between the prosecutor and defense counsel, and when there has been an agreement that defendant will turn himself or herself in.

D. Summons to Appear in Misdemeanor Cases

As an alternative to filing an order for a warrant after an arrest for a "minor offense," MCL 764.9a(1) gives authority to the prosecutor to issue the defendant a written order for a summons.

"'Minor offense' means a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed $1,000.00." MCL 761.1(k).*

*Some prosecutors issue a written summons to persons arrested for minor in possession of alcohol, MCL 436.1703, which authorizes, on a first offense, a maximum fine of $100.00, community service, and substance abuse prevention.

The summons shall direct the defendant to appear at a designated time before a magistrate of the judicial district in which the offense is alleged to have been committed. MCL 764.9a(1).

"The summons shall designate the name of the issuing court, the offense charged in the underlying complaint, and the name of the defendant to whom it is addressed, and shall be subscribed by the issuing magistrate." MCL 764.9a(2).

"A summons may be served in the same manner as a warrant." MCL 764.9a(3).

E. Defendant in Custody Following Warrantless Arrest

If the accused is in custody following a warrantless arrest, MCL 764.1c(1)(a)-(b) requires a magistrate, upon finding reasonable cause, to do either of the following:

> "(a) Issue a warrant or
>
> "(b) Endorse upon the complaint a finding of reasonable cause and a direction to take the accused before a magistrate of the judicial district in which the offense is charged to have been committed."

An endorsement of the complaint pursuant to MCL 764.1c(1)(b) will constitute both a complaint and warrant. MCL 764.1c(2).*

*See also MCR 6.104(D), which adopts the procedures set forth in MCL 764.1c for felony cases.

MCR 6.104(G) requires each county to adopt a plan for judicial availability so a judicial officer is available every day of the year to conduct arraignments or set bail. MCR 6.104(G) requires all plans to:

> "(1) make a judicial officer available for arraignments each day of the year, or
>
> "(2) make a judicial officer available for setting bail for every person arrested for a felony* each day of the year conditioned upon
>
> > "(a) the judicial officer being presented a proper complaint and finding probable cause, and
> >
> > "(b) the judicial offer having available information to set bail."

*For convenience, it is suggested that the judicial availability plan also contain a provision making a judicial officer available for setting bail in misdemeanor cases.

MCR 6.104(G) also requires the judicial officer to order the arresting officials to arrange prompt transportation of any accused unable to post

bond to the judicial district of the offense for arraignment not later than the next regular business day.

1.5 Arrest Warrants and Complaints for Juveniles Charged with Specified Juvenile Violations

According to MCL 764.1f, if a prosecuting attorney has reason to believe that a juvenile at least 14 years of age and less then 17 years of age has committed a "specified juvenile violation," the prosecutor may authorize the filing of a complaint and warrant in district court on the charge instead of filing a petition in the family division of circuit court.

Under MCL 764.1f(2), "specified juvenile violations" are:

- Burning of a dwelling house, MCL 750.72.
- Assault with intent to murder, MCL 750.83.
- Assault with intent to maim, MCL 750.86.
- Assault with intent to rob while armed, MCL 750.89.
- Attempted murder, MCL 750.91.
- First-degree murder, MCL 750.316.
- Second-degree murder, MCL 750.317.
- Kidnapping, MCL 750.349.
- First-degree criminal sexual conduct, MCL 750.520b.
- Armed robbery, MCL 750.529.
- Carjacking, MCL 750.529a.
- Bank, safe, or vault robbery, MCL 750.531.
- Assault with intent to do great bodily harm if the juvenile is armed with a "dangerous weapon," MCL 750.84.*
- First-degree home invasion, MCL 750.110a(2).
- Escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency or a county juvenile agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency or a county juvenile agency, MCL 750.186a.
- Manufacture, sale, or delivery, MCL 333.7401(2)(a)(i), or possession, MCL 333.7403(2)(a)(i), of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine.

*See MCL 764.1f(2)(b) for the definition of "dangerous weapon."

- Attempt to commit any of the foregoing offenses.
- Solicitation to commit any of the foregoing offenses or murder.
- Conspiracy to commit any of the foregoing offenses.

1.6 Initiating the Arrest Warrant Process

Routinely, court clerks prepare court files and place them on the bench for the judge's inspection. It is important to ensure that the file has been assigned a case number and includes the complaint and warrant. Sometimes a complaint and warrant will be brought directly to the judge by a police officer before a court file has been created by the clerk. In these instances, no case number will have been assigned to the file.

A. Definition of Complaint

A complaint is a written accusation that a named or described person has committed a specified criminal offense. A complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense. MCR 6.101(A).

A complaint must recite the substance of the accusation against the accused and may contain factual allegations establishing reasonable cause. MCL 764.1d. "The primary function of a complaint is to move the magistrate to determine whether a warrant shall issue." *Wayne County Prosecutor v Recorder's Court Judge*, 119 Mich App 159, 162 (1982).

It is not necessary that a complaint establish all factual allegations against the defendant, only that it provide sufficient information so that a neutral and detached magistrate is able to find probable cause. *United States v Fachini*, 466 F2d 53, 56 (CA 6, 1972).

Under MCR 6.103(A), a complaint does not need to be filed in the following circumstances:

- When the defendant has been issued an appearance ticket for misdemeanor violations. If filed with the court, an appearance ticket will serve as the complaint. See Section 1.4(A) for more information on this issue.
- When the defendant has been issued a citation to appear, unless the defendant has failed to appear before the designated magistrate. If the defendant has failed to appear, a sworn complaint must be filed with the magistrate, who may then issue an arrest warrant. See Section 1.4(B) for more information on this issue.

*See Section 1.4(D) for more information on summons to appear in misdemeanor cases.

- When the defendant has been issued a summons to appear in a misdemeanor case. The officer may ask the court to issue a summons instead of filing an order for arrest. If the defendant fails to respond to the summons, the court, on request must issue a warrant for arrest.* MCL 764.9a(1).

A grand jury indictment cannot substitute as a complaint, even though MCR 6.112(B) allows commencement of judicial proceedings without a complaint when a grand jury indictment has been issued. In *People v Glass*, 464 Mich 266 (2001), the Supreme Court held that the information, filed with no supporting complaint and warrant, was "null and void because it was filed pursuant to the invalid scheme set forth in MCR 6.112(B) that purported to allow [a grand jury] indictment to substitute for a complaint." *Id*. at 283. According to the Supreme Court, the prosecutor, although doing so consistently with MCR 6.112(B), erroneously treated the grand jury indictment as "nothing more than a complaint initiating criminal proceedings, despite MCR 6.112(A) and MCL 767.2 which treat indictments as equivalent to informations." *Id.* at 280-281.

B. Definition of Warrant

An arrest warrant is an order by a court to arrest a defendant and bring him or her before the court to answer to the charge alleged in the complaint and to be further dealt with according to law. MCL 764.1b.

A complaint may also serve as a warrant if the officer has made a warrantless arrest of the defendant, the defendant is in custody, and the magistrate endorses the complaint with a finding of probable cause. MCL 764.1c(2).

C. Drafting and Typing the Documents

The complaint and warrant are drafted and typed by either: (1) the prosecuting attorney, in the case of alleged violations of state statutes, or (2) the city, township, or village attorney, in the case of alleged violations of local ordinances. Preferably, complaints and warrants should be typed on the following State Court Administrative Office forms:

MC 200 - Complaint and Warrant Felony.

DC 225 - Complaint and Warrant Misdemeanor.

D. Persons Who May Issue Arrest Warrants

The Code of Criminal Procedure states that "magistrates" may issue arrest warrants for apprehension of persons charged with felony, misdemeanor, or ordinance violations. MCL 764.1. A "magistrate" is defined to include district court judges and municipal court judges. MCL 761.1(f). Additionally, MCL 761.1(f) provides that "[t]his definition does not limit the power of a justice of the supreme court, a circuit judge, or a judge of a

court of record having jurisdiction of criminal cases under this act, or deprive him or her of the power to exercise the authority of a magistrate." No provision of MCL 761.1 allows probate judges to issue arrest warrants.

District court magistrates have the authority to issue arrest warrants. See MCL 600.8511(d), which states in part: "[a] district court magistrate shall have the following jurisdiction and duties . . . : to issue warrants for the arrest of a person upon the written authorization of the prosecuting or municipal attorney."

It does not violate Const 1963, art 6, §19, the constitutional provision requiring "judges of courts" to be licensed to practice law, for a non-attorney magistrate to issue a warrant. *People v Ferrigan,* 103 Mich App 214, 219 (1981); *People v Delongchamps*, 103 Mich App 151, 158 (1981). Additionally, it is not a violation of due process for a non-attorney magistrate to issue a warrant. In *Shadwick v City of Tampa*, 407 US 345, 350 (1972), the United States Supreme Court established two necessary prerequisites that a magistrate must possess: to be neutral and detached,* and to be capable of determining probable cause. The Supreme Court concluded that there is no reason that a non-attorney could not meet these prerequisites. *Id.* at 352-353.

*For further information on the "neutral and detached" requirement for magistrates, see Smith, Criminal Procedure Monograph 2: *Issuance of Search Warrants—Revised Edition* (MJI, 2003), Section 2.2(C).

1.7 Security for Costs

Both statute, MCL 764.1(1)-(2), and court rule, MCR 6.101(C), include a procedure that permits a private citizen to file a felony or misdemeanor complaint when security for costs is filed with the magistrate. However, both the statute and the court rule are silent regarding the procedure a court should use when a citizen seeks to file security for costs.

In *People v Joker*, 63 Mich App 421, 429 (1975), the Court of Appeals held that even an indigent complainant must post more than a nominal sum as security. Therefore, the amount of security that a court requires should be reasonable and accurately reflect the likely expenses of the prosecution, rather than a minimal amount that merely placates the statutory requirements.

1.8 Required Signatures on a Complaint

A. Signature and Written Authorization by Prosecuting Attorney and Other Governmental Officials

Unless the crime is a "minor offense,"* a magistrate may not issue an arrest warrant for a person charged with a felony, misdemeanor, or ordinance violation until the magistrate has received a written authorization allowing the issuance of the warrant, filed with the court, and signed by the prosecuting attorney. MCL 764.1(1). A prosecutor's signature or security for costs is also required under MCR 6.101(C) in felony cases. See Section 1.7 for further discussion on security for costs.

*See Section 1.4(D) for a definition of "minor offense."

*See Section 1.4(D) for a definition of "minor offense."

MCL 764.1(2) provides that a magistrate may not issue a warrant for a "minor offense,"* unless the magistrate has received a written authorization allowing the issuance of the warrant, signed by the prosecuting attorney, or unless security for costs is filed with the magistrate. However, under MCL 764.1(2)(a)-(b), if the warrant is requested by any of the following persons, no security for costs is required and no prosecutor signature is required:

- Agents of the state transportation department, county road commission, or the public service commission for a violation of the motor carrier act; or
- The director of the department of natural resources, or a special assistant or conservation officer appointed by the director and declared by the statute to be a peace officer, for a violation of a law which provides for the protection of wild game or fish.

A prosecutor's failure to sign a warrant may divest the court of jurisdiction. In *People v Holbrook*, 373 Mich 94, 98-99 (1964), the Supreme Court overturned a jury verdict against the defendant, holding that he was unlawfully proceeded against, since in the absence of a prosecutor signature, the justice of the peace did not have jurisdiction to issue the arrest warrant against him. In *Holbrook*, two Michigan State Police troopers noticed a car driving slowly along the side of the road. The car then stopped and turned its headlights off. Someone within the car shined a flashlight into a nearby field until deer were spotted in the field. The car did this repeatedly. The troopers then heard a loud blast and saw a person run from the car into the field. The car drove away and was soon stopped by the troopers. Holbrook, the defendant, was the driver of the car. Afterward, a conservation officer drew up complaints against the defendants, which were signed by one of the troopers. A justice of the peace issued the warrants. No prosecutor signed the complaints. The Supreme Court found that the failure to follow the language of the statute granting a justice of the peace the authority to issue a warrant only upon a signed order from the prosecutor, or the filing of costs, meant that the court did not have the jurisdiction to prosecute.

> **Note:** The issue in *Holbrook* probably would not be decided the same way today, because a complaint signed by a conservation officer for a "minor offense" does not have to be signed by the prosecuting attorney under MCL 764.1(2)(b). However, the statutory requirement of a prosecutor's signature on a complaint for other offenses is still valid. See *People v Carter*, 379 Mich 24, 30 (1967), where the Supreme Court held that "in harmony with *Holbrook*, . . . the prosecuting attorney must signify in writing his approval of the issuance of a warrant."

*See SCAO Form MC 200 for felonies, and DC 225 for misdemeanors.

SCAO-approved forms for felony and misdemeanor complaints* contain a small box for the prosecuting official's signature. If the prosecutor's signature does not appear in this box, the court, except in limited circumstances, has no authority to issue the warrant and should refer the

complaining witness back to the prosecuting official to procure the required signature. MCL 764.1(1)-(2). As the Court of Appeals noted in *People v White*, 167 Mich App 461, 465 (1988), the magistrate's power to issue an arrest warrant for applicable offenses is expressly dependent on the written authorization of the prosecuting attorney or the municipal attorney.

B. Signature and Oath of Complaining Witness

MCL 764.1a(1) requires the complaint to be sworn before a magistrate or clerk. Thus, if a clerk has not already done so, the court should administer the oath or affirmation to the complaining witness and have him or her swear to the complaint. MCR 6.101(B) also requires that a complaint be signed and sworn in front of the magistrate.

MCL 764.1a(3) provides:

> "The magistrate may require sworn testimony of the complainant or other individuals. Supplemental affidavits may be sworn to before an individual authorized by law to administer oaths. The factual allegations contained in the complaint, testimony, or affidavits may be based upon personal knowledge, information and belief, or both."

Although affidavits are not required to support a probable cause determination under MCR 6.102(B), if affidavits are used, they "must be verified by oath or affirmation." MCR 2.113(A). Regarding the necessary verification, MCR 2.114(B)(2) provides:

> "If a document is required or permitted to be verified, it may be verified by
>
> > "(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or
> >
> > "(b) except as to an affidavit, including the following signed and dated declaration: 'I declare that the statements above are true to the best of my information, knowledge, and belief.'"

Although MCR 2.113 and MCR 2.114 are rules governing civil procedure, the rules may also be applied to matters of criminal procedure. See MCR 6.001(D)(1)-(3), which state, in pertinent part: "The . . . rules of civil procedure apply to cases governed by this chapter [Criminal Procedure], except

> "(1) as otherwise provided by rule or statute,
>
> "(2) when it clearly appears that they apply to civil actions only, or

> "(3) when a statute or court rule provides a like or different procedure."

Under MCL 764.1a(4), a magistrate cannot refuse to accept a complaint alleging a violation of MCL 750.81 (assault and battery, including domestic assault and battery) or MCL 750.81a (aggravated assault and battery, including domestic aggravated assault and battery) if both of the following are present:*

*This requirement also applies to local ordinances substantially complying with MCL 750.81. MCL 764.1a(4).

- The victim is a spouse or former spouse of the defendant, has a child in common with the defendant, or resides or has resided in the same house as the defendant; and
- The complaint is signed upon information and belief by an individual other than the victim.

> **Note:** Although Michigan's domestic violence crimes in MCL 750.81-750.81a were amended to include a "dating relationship" factor, MCL 764.1a has not yet been amended to include this factor.

1.9 Allegations That Establish the Commission of an Offense

A court has the authority to issue a felony warrant under the court rules only if presented with a proper complaint and upon a finding of probable cause.* MCR 6.102(A). The felony complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense. MCR 6.101(A). For felony or misdemeanor cases, MCL 764.1a(1) provides:

*See Section 1.10 for a discussion of "probable cause."

> "A magistrate shall issue a warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense. The complaint shall be sworn to before a magistrate or clerk."

In felony cases, the complaint must include the substance of the accusation against the accused and the name and statutory citation of the offense. See MCR 6.101(A), which under MCR 6.001 only applies to felony cases. MCL 764.1a does not require either the name of the offense or a statutory citation. Although not required under MCL 764.1a, it is recommended that the name and statutory citation of the offense be included in the complaint even on misdemeanor offenses to avoid arguments about the sufficiency of a complaint.

A. Pleading Statute or Ordinance

A complaint under a statute must state the facts and circumstances that constitute the statutory offense. *People v Frederighi*, 192 Mich 165, 168 (1916). However, it is not necessary to use the exact language of the statute as long as words of equivalent import are used. *People v Husted*, 52 Mich 624, 626 (1884). See also *People v Perez*, 22 Mich App 469, 472 (1970) (the complaint was sufficient where it failed to allege "wilful" conduct, since "the offense charged was apparent with or with out the term wilful").

> **Note:** For local ordinances, it is not necessary to set forth the ordinance or its provisions. MCL 66.9 and MCL 90.10. Rather, it is sufficient if the complaint recites the title and section number of the ordinance, including the effective date. MCL 66.9(1). Additionally, MCL 66.9(2) provides: "It is a sufficient statement of the cause of action in a complaint or warrant to set forth substantially, and with reasonable certainty, as to time and place, the act complained of, and to allege the act to be in violation of an ordinance . . . referring to the ordinance by its title and the section number and effective date."

If the facts in a complaint sufficiently set forth an offense under a particular section of a statute, it is immaterial that the complaint erroneously states the wrong section. *People v Wolfe*, 338 Mich 525, 536-537 (1953). Further, it is the facts contained in the complaint, not the belief of the person drafting it, that control the particular section of law on which the charge should be predicated.

When a statute or ordinance fixes a classification and creates an offense which can only be committed by persons within the class, it is necessary to allege that the accused is a member of that class. See *People v Meisner*, 178 Mich 115, 116 (1913), where the Supreme Court dismissed the charges against a defendant charged with a violation of a statute regulating auctioneers, because the complaint did not allege, nor did the state prove, that defendant was an auctioneer.

B. Allegations of Time, Place, and Name of Accused

1. Time

Generally, a complaint is not invalidated merely because the complainant is unable to ascertain the exact date of the alleged violation. *Hamilton v People*, 46 Mich 186, 188-189 (1881). However, when time is an element of the offense charged, it should be set forth in the complaint. When time is not an element of the offense charged, a variance is permissible. In response to a motion, the court may require the prosecution to state the time or identify the occasion as nearly as possible to enable the accused to meet the charge. See MCL 767.51, which details requirements for alleging the time of offense in circuit court informations.

In *People v Naugle*, 152 Mich App 227, 234 (1986), the Court of Appeals established several factors to consider in determining when and to what extent specificity of the time of the offense should be required. These factors are:

- The nature of the crime charged;
- The victim's ability to specify a date;
- The prosecutor's efforts to specify a date; and
- The prejudice to the defendant in preparing a defense.

The Court of Appeals in *Naugle* held the following: "Where the facts demonstrate that the prosecutor has stated the date and time of the offense to the best of his or her knowledge after making a reasonably thorough investigation, we would be disinclined to hold that an information . . . was deficient for failure to pinpoint a specific date." *Id*.

For ordinance violations, the time should be stated on the complaint or warrant with "reasonable certainty." MCL 66.9.

2. Place

The complaint should state the place where the offense is alleged to have been committed. It is sufficient if the complaint describes the offense as having been committed in an incorporated village of the county, even though the name of the county is not mentioned. *People v Telford*, 56 Mich 514, 542 (1885). However, in *People v Gregory*, 30 Mich 370, 372 (1874), the complaint "named no county . . . except the county of 'Michigan.'" The Supreme Court held that the complaint was fatally defective and reversed defendant's conviction because the erroneous statement naming the county of Michigan "was no better than a blank."

For ordinance violations, the place should be stated on the complaint or warrant with "reasonable certainty." MCL 66.9.

3. Name of the Accused

MCR 6.101(A) defines a complaint as "a written accusation that *a named or described person* has committed a specified criminal offense." [Emphasis added.]

In informations, it is sufficient to use the defendant's nickname, a fictitious name, or a description of a person whose name is unknown. MCL 767.49. For corporate defendants, the corporate name or any designation by which it is known may be used. *Id*. For unincorporated groups, it is enough to state the proper name of the group or any name used by the group. *Id*.

When the defendant's name is unknown, the usual practice is to describe the defendant in the complaint as: "John (or Mary) Doe, whose real name is unknown," and to include a physical description of defendant in the

complaint. However, if the person's real name becomes known during the course of the trial, an amendment is proper to set forth the correct name. MCL 767.49.

1.10 Probable Cause Determination

A. Probable Cause Defined

Probable cause to arrest exists when the facts are sufficient to cause a fair-minded person of average intelligence to believe that the defendant committed the crime alleged. *People v Ward*, 226 Mich 45, 50 (1924).

"To constitute probable cause . . . , there must be such reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious man in the belief that the person arrested is guilty of the offense charged." *Matthews v Blue Cross & Blue Shield*, 456 Mich 365, 387 (1998), quoting *Wilson v Bowen*, 64 Mich 133, 138 (1887). See also *People v Champion*, 452 Mich 92, 115 (1996) ("Probable cause to arrest exists where the facts and circumstances within an officer's knowledge and of which he has reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed").

The United States Supreme Court has stated that "articulating precisely what . . . 'probable cause' means is not possible. [It is a] commonsense, nontechnical conception[] that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act' [and] as such the standards are 'not readily, or even usefully, reduced to a neat set of legal rules.' . . . We have cautioned that [this] legal principle[] [is] not [a] 'finely-tuned standard []' comparable to the standards of proof beyond a reasonable doubt or of proof by a preponderance of the evidence. [It is] instead [a] fluid concept[] that takes [its] substantive content from the particular contexts in which the standards are being assessed." *Matthews*, *supra* at 387 n 34, quoting *Ornelas v United States*, 517 US 690 (1996).

B. Finding of Probable Cause

MCR 6.102(B) permits a court to use hearsay evidence to make a finding of probable cause to issue an arrest warrant in felony cases.* Additionally, under MCR 6.102(B), a finding of probable cause may be based on the factual allegations contained in any of the following sources or combination of sources:

- The complaint;
- The affidavits from the complainant or others; or
- The testimony of a sworn witness, adequately preserved to permit review.

*MRE 1101(b)(3) states that the rules of evidence do not apply to the "issuance of warrants for arrest."

MCL 764.1a(2) states:

> "The finding of reasonable cause by the magistrate may be based upon 1 or more of the following:
>
> (a) Factual allegations of the complainant contained in the complaint.
>
> (b) The complainant's sworn testimony.
>
> (c) The complainant's affidavit.
>
> (d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate."

*See Section 1.10(C) for further discussion of the record of testimony.

MCR 6.102 incorporates the requirements for issuance of an arrest warrant as set forth in MCL 764.1a(2), except that the court rule uses the term "probable cause" in lieu of "reasonable cause." The 1989 Staff Comment to MCR 6.102(A) states that "probable cause" is equivalent to "reasonable cause" but that the preferred term is "probable cause." Additionally, MCR 6.102(B) requires that any sworn testimony relied on in making the probable cause determination be placed on the record.*

The taking of the complaint and the examination of the complaining witness (and other persons if necessary) is usually combined in one operation by the magistrate. Typically, the examination itself is oral, very informal, and amounts to little more than information under oath for the record. The complaining witness states that he or she believes an offense has been committed along with the factual basis for that belief. The factual basis is supplied by the operative facts relied on by the complaining witness and not merely by his or her conclusions. It must appear that an affiant spoke with personal knowledge, or else the sources for the witness's belief must be disclosed. When the belief is based on information from other persons, other than an eyewitness, some basis of informant credibility must be shown. *People v Hill*, 44 Mich App 308, 315 (1973).

Generally speaking, criminal complaints contain few, if any, factual allegations. They merely state the conclusive allegation that the defendant committed the offense charged, reciting more or less the statutory language. However, in some courts, affidavits are submitted in support of complaints.

A finding of probable cause on a complaint is proper where the complaint and testimony are sufficient to enable the magistrate "to make the judgment that the charges [were] not capricious and [were] sufficiently supported to justify bringing into play further steps of the criminal process." *Id*. at 312, quoting *Jaben v United States*, 381 US 214, 224-225 (1965).

A magistrate has the authority to find probable cause for offenses other than the offenses specified in the complaint. "An examining magistrate is not bound by the limitations of the written complaint, but may consider other matters connected with the charge and deemed pertinent, and may in his discretion add a count not originally charged upon a proper motion by the prosecutor." *People v Joseph*, 114 Mich App 70, 77-78 (1982). See also *People v Mathis,* 75 Mich App 320, 329 (1977) ("[a]n examining magistrate is not bound by the limitations of the written complaint and may examine not only the truth of the charge of the complaint, but also other matters connected with the charge which he deems pertinent").

C. Record of Testimony

Any sworn testimony relied on in making the probable cause determination must be adequately preserved to permit review. MCR 6.102(B).* A record of testimony is critical when there is a review of the validity of the arrest warrant in connection with the seizure of physical evidence.

*MCR 6.102 applies only in felony cases. MCR 6.001.

In *People v Burrill*, 391 Mich 124, 128 (1974), the magistrate issued the arrest warrant based on a complaint which contained conclusory statements. At the time of issuance, the magistrate had no personal knowledge of the officer who signed the complaint, nor did the magistrate interview any witnesses. The Supreme Court held that the warrant was invalid for lack of probable cause. However the invalidity of the warrant did not effect the jurisdiction of the court because in Michigan a complaint serves a dual purpose: (1) "[initiation] of the judicial process," and (2) "providing a basis for the issuance of an arrest warrant." *Id*. Therefore, although the complaint failed as the basis for issuing the warrant, the Supreme Court held that it did not fail as a basis for starting judicial proceedings, and thus the court was not divested of jurisdiction since the officer had "probable cause to arrest Burrill based on his conversations with the [victim]." *Id.* at 136.

As the United States Supreme Court has stated, "[t]he sole sanction imposed . . . for the invalidity of an arrest warrant has been the suppression of evidence obtained from the person following his illegal arrest" and not divesting the court of jurisdiction. *Id.* at 133. In *Whiteley v Warden of Wyoming State Penetentiary*, 401 US 560, 568-569 (1971), a sheriff, acting on an informant's tip, presented a complaint before the magistrate that Whiteley and another person had broken into and entered a locked building. The complaint contained only conclusory statements by the sheriff, and the sheriff failed to mention that he was relying on an informant's tip in the complaint. The sheriff then put out a radio bulletin giving the names and descriptions of the suspects, the type of car they were probably driving, and the amount of money taken. An officer, relying on the radio bulletin, arrested the suspects and seized physical evidence incident to the arrest. The court first held that the arrest warrant was invalid. *Id*. at 565. However, the invalidity of the arrest warrant would not automatically cause the suppression of evidence if the arresting officer "possessed sufficient factual information to support a finding of probable cause for arrest without a warrant." *Id.* at 565-566. The court found that

the arresting officer could not show sufficient facts that the people in the car had committed the crime stated in the police bulletin, and not just evidence of their identity from the police bulletin. *Id*. at 567. The evidence obtained was suppressed.

Furthermore, a record of testimony to show a false swearing may be necessary to support a charge of perjury against a complaining witness who knowingly makes false statements that form the basis for a person's arrest. *People v Kennedy*, 9 Mich App 346, 348 (1968).

1.11 Required Contents of Warrant

When a felony is charged, MCR 6.102(C)(1)-(4) requires an arrest warrant to:

> "(1) contain the accused's name, if known, or an identifying name or description;
>
> "(2) describe the offense charged in the complaint;
>
> "(3) command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer of the judicial district in which the offense allegedly was committed or some other designated court; and
>
> "(4) be signed by the court."

> **Note:** MCR 6.102(D), which also pertains to felony charges, allows the magistrate to specify on the warrant the amount of interim bail the accused may post to obtain release before arraignment on the warrant. See Section 1.13 for further discussion of interim bail provisions.

For felony or misdemeanor charges, MCL 764.1b requires that the arrest warrant:

> "shall be directed to a peace officer; shall command the peace officer immediately to arrest the person accused and to take that person, without unnecessary delay, before a magistrate of the judicial district in which the offense is charged to have been committed, to be dealt with according to law; and shall direct that the warrant, with a proper return noted on the warrant, be delivered to the magistrate before whom the arrested person is to be taken. The warrant may also require the peace officer to summon the witnesses named in the warrant."

1.12 Execution of Complaint and Warrant

A. Filing and Service of Complaint

The original complaint and a copy of the arrest warrant should be returned to the court clerk for filing. If the arrest warrant is issued by a circuit court judge, it is necessary for both the complaint and warrant to be filed in the district court clerk's office. The original arrest warrant should then be given to a person authorized to serve the arrest warrant. MCR 6.102(E).

For felony charges, MCR 6.102(E) states that "[o]nly a peace officer or other person authorized by law may execute an arrest warrant." For felony and misdemeanor charges, MCL 764.1b authorizes "a peace officer immediately to arrest the person accused and to take that person . . . before a magistrate of the judicial district in which the offense is charged to have been committed . . . ." It is not necessary for the arresting officer to personally possess the arrest warrant. Rather, it is sufficient for the officer to inform the arrestee of an outstanding warrant for his or her arrest. However, the officer must show the arrest warrant to the arrestee as soon as practicable after the arrest. MCL 764.18.

B. Return on an Arrest Warrant

The return on an arrest warrant is a certificate of the executing officer, which states the manner in which the warrant was executed. For felony arrest warrants, MCR 6.102(E) provides that "[o]n execution or attempted execution of the warrant, the officer must make a return on the warrant and deliver it to the court before which the arrested person is to be taken."

For felony or misdemeanor arrest warrants, MCL 764.19 states that "[t]he return of the officer making the arrest, endorsed upon the warrant upon which the accused shall be subsequently held, affirming compliance with the provisions herein, shall be prima facie evidence of the fact in the trial of any criminal cause."

To remove the arrest warrant from the Law Enforcement Information Network (LEIN), a court may use SCAO Form MC 220 ("Recall of Warrant/Order to Apprehend"), which directs the court to advise the responsible police agency by phone.

1.13 Interim Bail Provisions in Warrant

A. Felony Cases

In felony cases, the court authorizing the arrest warrant has the option of specifying on the warrant the "bail that an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur

on or before a specified date or within a specified period of time after the issuance of the warrant." MCR 6.102(D).

The 1989 Staff Comment to MCR 6.102(D) states that subrule (D) "further authorizes the court, in its discretion, to include an expiration date for the interim bail provision. This option permits the court to set a cut-off date, beyond which release may not be obtained, to prevent the release of a person who may be avoiding arrest. However, setting of an expiration date may also defeat the purpose of the interim bail provision if it is too short or is used in a case where the arrest of the defendant is sought solely in a passive fashion such as awaiting the defendant's stop for a traffic offense."

*See MCR 6.001.

MCR 6.102 applies only in felony cases.* Under MCR 6.102(D), interim bond is available only where an arrest warrant was issued with the judge's specification for interim bail. For misdemeanor cases, see MCL 780.581(2), which authorizes interim bond where the defendant was arrested with or without a warrant for a misdemeanor. See Section 1.13(B) for further discussion on interim bond in misdemeanor cases.

If the accused has been arrested for a felony pursuant to an arrest warrant that contained the judge's specification for interim bail, the accused "must either be arraigned promptly or released pursuant to the interim bail provision." MCR 6.102(F). It follows then that if the accused can be arraigned promptly, the officer can hold the accused even if there is an interim bail provision. See the 1989 Staff Comment to MCR 6.102(F) ("[t]he arresting agency has the option of either releasing the accused on the interim bail or immediately taking the accused to be arraigned if the arraignment can be conducted promptly").

To gain release on interim bail, MCR 6.102(F) requires the accused to "[post] bail on the warrant" and to submit "a recognizance to appear before a specified court at a specified date and time . . . ." However, under MCR 6.102(F)(1)-(4), all the following must be present before the accused can be released:

> "(1) the accused is arrested prior to the expiration date, if any, of the bail provision;
>
> "(2) the accused is arrested in the county in which the warrant was issued, or in which the accused resides or is employed, and the accused is not wanted on another charge;
>
> "(3) the accused is not under the influence of liquor or controlled substance; and
>
> "(4) the condition of the accused or the circumstances at the time of arrest do not otherwise suggest a need for judicial review of the original specification of bail."

Additionally, the 1989 Staff Comment to MCR 6.102(F) states in part:

> "This subrule also lists conditions that must be met in order for an accused to be eligible for release on interim bail. Subrule (2) requires that the accused be arrested in the county in which the warrant was issued or in which the accused resides or is employed. The purpose of this limitation is to preclude the availability of interim bail to a person who may be avoiding arrest. Subrule (3) does not preclude interim bail release of an accused who was under the influence of liquor at the time of arrest but who is no longer in that condition. Subrule (4) is a catch-all provision and should be applied in good faith. Implicit in subrule (F) is the condition that the accused be satisfactorily identified as the person named in the warrant. Additionally, the rule does not preclude the police agency from requiring the accused to submit to photographing and fingerprinting before being released."

B. Misdemeanor Cases

If a magistrate is not available, or an immediate trial cannot be had, a person arrested for a misdemeanor,* either with a warrant, MCL 780.582, or without a warrant, MCL 780.582a, "may deposit with the arresting officer or the direct supervisor of the arresting officer or department, or with a deputy in charge of the county jail . . . , an interim bond to guarantee his or her appearance." MCL 780.581(2).

*For felony cases, interim bond is only available where the accused was arrested with a warrant that contains a judge's specifications for interim bond. See Section 1.13(A) for further discussion of interim bond in felony cases.

The bond should be a sum of money not to exceed the maximum amount possible for the fine, but not less than 20% of the amount of the minimum possible fine that may be imposed. The officer who accepts the bail is responsible for determining the amount. MCL 780.581(2). However, MCL 780.582a(1), as amended by 2001 PA 198, effective April 1, 2002, states that interim bail is *not* available in misdemeanor cases "until [the accused] can be arraigned or have interim bond set by a judge or district court magistrate if either of the following applies":

- The accused is arrested without a warrant for a violation of MCL 764.15a (warrantless arrest authority for assault and battery and domestic assault and battery, MCL 750.81, and aggravated assault and domestic aggravated assault, MCL 750.81a), or a local ordinance substantially complying with MCL 764.15a; or

- The person is arrested with a warrant for a violation of MCL 750.81 (assault and battery and domestic assault and battery), MCL 750.81a (aggravated assault and domestic aggravated assault), or a local ordinance substantially corresponding to MCL 750.81, and the person "is a spouse or former spouse of the victim of the violation, has or has had a dating relationship with the victim of the violation, has had a child in common with the victim

> of the violation, or is a person who resides or has resided in the same household as the victim of the violation."

A judge or district court magistrate may impose conditions on the accused's release regarding further contact with the victim. MCL 780.582a(2) states that "[i]f a judge or district court magistrate sets interim bond under this section, the judge or magistrate shall consider and may impose the condition that the person released shall not have or attempt to have contact of any kind with the victim." A magistrate's (or district court judge's) authority to impose other conditions of release or other protective measures will not be limited by MCL 780.582a. MCL 780.582a(7).

MCL 780.582a(3) requires the judge or district court magistrate to inform the person subject to the protective conditions on the record, "either orally or by a writing that is personally delivered to the person, of the specific conditions imposed and that if the person violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if he or she is found in contempt of court."

Under MCL 780.582a(4)(a)-(e), an order or amended order issued under MCL 780.582a(3) must contain all the following:

> "(a) A statement of the person's full name.
>
> "(b) A statement of the person's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or district court magistrate considers appropriate.
>
> "(c) A statement of the date the conditions become effective.
>
> "(d) A statement of the date on which the order will expire.
>
> "(e) A statement of conditions imposed, including, but not limited to, the condition prescribed in [MCL 780.582a(3)]."

After bond is amended, "[t]he judge or district court magistrate shall immediately direct a law enforcement agency within the jurisdiction of the court, in writing, to enter an order or amended order issued under [MCL 780.582a(3)] into the law enforcement information network as provided by [MCL 28.211 to 28.216]." MCL 780.582a(5). The law enforcement agency must immediately do so. MCL 780.582a(6).

In cases arising under MCL 780.582 (arrest with a warrant), "the magistrate issuing the warrant may endorse on the back thereof a greater or lesser amount for an interim bond." MCL 780.585. When a district court judge or magistrate has set bond, the officer may take the bond, give

a receipt to the offender, and deposit the bond with the court with jurisdiction within a reasonable time. MCL 780.68. However, only "the court before which the proceeding is pending may increase or reduce the amount of bail or may alter the conditions of the bail bond." MCL 780.65(1).

In addition to the foregoing restrictions, MCL 780.581(3) provides that a court may temporarily deny an arrested person's right to interim bond if, in the opinion of the arresting officer (or the law enforcement agency), any of the following exist:

- The defendant is found under the influence of intoxicating liquors, or a controlled substance, or any combination thereof.
- The defendant is unable to establish or demonstrate his or her identity.
- The defendant is wanted by authorities to answer to another charge.
- It is otherwise unsafe to release the defendant.

If any of the foregoing conditions exist, "the arrested person shall be held . . . until he or she is in a proper condition to be released, or until the next session of court." MCL 780.581(4). If the person is arrested in a city, town or village that has a holding lockup, the arrested person must be placed in a holding lockup, or, if at capacity, in a holding lockup willing to accept the prisoner. *Id*. If the person is arrested in a city, town or village where there is no holding lockup, he or she shall be held in a holding lockup willing to accept the prisoner or in the county jail.

In *People v Coburn*, 140 Mich App 793, 797 (1985), the Court of Appeals held that under MCL 780.581(3) an officer must have an "informed, reasonable and articulable" ground for forming the belief that one of the foregoing conditions exist to deny defendant's statutory right to interim bond.

1.14 Execution of Warrant by Electronic Device

A complaint may be made by an electronic or electromagnetic device if all the following occur:

F "The prosecuting attorney authorizes the issuance of the warrant. Authorization may consist of an electronically or electromagnetically transmitted facsimile of the signed authorization." MCL 764.1(3)(a).

F "The judge orally administers the oath or affirmation to an applicant for an arrest warrant who submits a complaint under this subsection." MCL 764.1(3)(b).

- "The applicant signs the complaint. Proof that the applicant has signed the complaint may consist of an electronically or electromagnetically transmitted facsimile of the signed complaint." MCL 764.1(3)(c).

- "The person or department receiving an electronically or electromagnetically issued arrest warrant shall receive proof that the issuing judge has signed the warrant before the warrant is executed. Proof that the issuing judge has signed the warrant may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant." MCL 764.1(4).

1.15 Requirements for Charging Documents under the Crime Victim's Rights Act

If a complaint, petition, appearance ticket, traffic citation, or other charging instrument cites any one of several enumerated offenses, or a violation of a local ordinance substantially corresponding to any one of these enumerated offenses, the prosecutor or law enforcement officer must, under the juvenile and misdemeanor articles of the Crime Victim's Rights Act (CVRA), include the following language on the charging instrument:

> "that the offense resulted in damage to another individual's property or physical injury or death to another individual." MCL 780.783a (juvenile article) and MCL 780.811a (misdemeanor article).

This statement must be included in the charging document because the juvenile and misdemeanor articles of the CVRA only apply to the listed offenses when property damage, physical injury, or death results.

The enumerated offenses under the juvenile article of the CVRA are listed in MCL 780.781(1)(f)(iii)-(v), as follows:

- Leaving the scene of a personal-injury accident, MCL 257.617a;

- Operating a vehicle while under the influence of or impaired by intoxicating liquor, or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual, MCL 257.625;

- Selling or furnishing alcoholic liquor to an individual less than 21 years of age, if the violation results in physical injury or death to any individual, MCL 436.1701; and

- Operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3).

The enumerated offenses under the misdemeanor article of the CVRA are listed in MCL 780.811(1)(a)(x), (xi), and (xiii), as follows:

- Operating a vehicle while under the influence of or impaired by intoxicating liquor, or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual, MCL 257.625;
- Selling or furnishing alcoholic liquor to an individual less than 21 years of age, if the violation results in physical injury or death to any individual, MCL 436.1701; and
- Operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3).

Along with the charging document, the applicable law enforcement agency must file a separate list of names, addresses, and telephone numbers of each victim for any offenses falling under the juvenile or misdemeanor articles of the CVRA. MCL 780.784 (juvenile article) and MCL 780.812 (misdemeanor article).

> **Note:** For a discussion of charging document requirements under the CVRA, see Miller, *Crime Victim Rights Manual* (MJI, 2001), Section 7.4. For a discussion of the CVRA generally, see *Id*., Chapter 3.

Part B — Checklists

1.16 Checklist for Issuing Complaint & Arrest Warrant

1.17 Checklist for Issuing Complaint & Arrest Warrant by Facsimile Transmission

1.16 Checklist for Issuing Complaint & Arrest Warrant

This checklist applies to both misdemeanor and felony offenses. Any differences in the method of treating misdemeanor and felony offenses are denoted in the checklist.

❑ 1. Ensure that the clerk has prepared a file with the complaint and warrant, and has assigned a case number. **Note:** If the defendant is already in custody pursuant to a warrantless arrest, you may issue a warrant or endorse on the complaint a finding of probable cause.

❑ 2. Ensure that the complaint is in proper form and includes an authorization by the prosecutor.

❑ 3. Examine the complaint to determine that it:

- ❑ names or describes the person alleged to have committed an offense;
- ❑ alleges the commission of an offense;
- ❑ specifies the time and date of the offense;
- ❑ specifies the place where the offense occurred; and
- ❑ states the name of the offense and the statutory citation of the offense. **Note:** This last item is a suggested, but not required, practice.

❑ 4. Swear and examine the complaining witness. Additionally, in felony cases, make a record of any testimony used in the probable cause determination.

❑ 5. Determine whether there is probable cause to believe that the person accused in the complaint committed the alleged offense. This determination may be based on hearsay evidence and rely on the factual allegations in the complaint, the complainant's sworn testimony, affidavit, and/or any supplemental sworn testimony or affidavits of other persons presented by the complainant or required by you.

❑ 6. Have the complaining witness sign the complaint before the court.

❑ 7. If desired, specify on the warrant the interim bail amount for the accused to post to obtain release before arraignment. In felony cases, if desired, include a bail condition that the arrest must occur before a specified date or within a specified period of time after the issuance of the warrant.

❑ 8. Sign and date both the complaint and warrant.

❑ 9. Return the court file to the clerk and give the warrant to the officer to execute.

1.17 Checklist for Issuing Complaint & Arrest Warrant by Facsimile Transmission

❑ 1. Upon receipt of a telephone call requesting that a complaint and warrant be issued, ensure that the prosecutor has authorized issuance of the complaint.

❑ 2. Telephonically administer the oath or affirmation to the applicant.

❑ 3. Ask the applicant to read the facts alleged in the complaint and determine that the complaint:

- ❑ names or describes the person alleged to have committed the offense.
- ❑ alleges the commission of an offense and the name and statutory citation of the offense.
- ❑ specifies the time and date of the offense.
- ❑ specifies the place where the offense occurred.

❑ 4. Determine whether there is probable cause to believe that the person accused in the complaint committed the alleged crime. This determination may be based on hearsay, such as the factual allegations from the complaint, the applicant's and complaining witness' affidavit and/or any supplemental affidavits of other persons presented by the applicant.

❑ 5. Ensure that the complaining witness has signed the complaint before facsimile transmission.

❑ 6. Upon receipt of the faxed complaint, endorse on the warrant, if desired, the amount of interim bond that the accused must post to obtain release before arraignment, including, if the complaint contains a felony charge, and if desired, a bail condition that the arrest occur on a specified date or within a specified period of time after issuance of the warrant.

❑ 7. Sign and date the complaint and warrant, and then fax them to the applicant.

❑ 8. Ensure that the signed warrant is filed with the court as soon as practicable.

❑ 9. If defendant is in custody, set bond and notify the authorities where the defendant is being held.